EDITOR'S NOTE

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Supreme Court, U.S.
FILED
DEC 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 85-400

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

THE STATE OF FLORIDA,

Petitioner,

vs.

PEDRO ROMERO a/k/a
GIOVANNI MASCARA,

Respondent.

On Petition for a Writ of Certiorari
to the Florida District Court of
Appeal

RESPONSE OF RESPONDENT ON JURISDICTION

MICHAEL L. VON ZAMFT
Attorney for Respondent
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QUESTION PRESENTED FOR REVIEW

DOES EDWARDS v. ARIZONA, 451 U.S. 477 (1981), AND THE FIFTH AND SIXTH AMENDMENT, MANDATE SUPPRESSION OF POST ARREST ORAL AND SIGNED RECORDED STATEMENTS OBTAINED AFTER MIRANDA WARNINGS WHERE COUNSEL, IN OPEN COURT WITH THE ACQUIESCENCE OF THE STATE, INVOKED THE DEFENDANT'S FIFTH AND SIXTH AMENDMENT RIGHTS AND THE DEFENDANT, ABSENT A REQUEST FOR COUNSEL, AND IN THE ABSENCE OF COUNSEL, WAIVED HIS RIGHTS WITHOUT COUNSEL HAVING BEEN NOTIFIED?

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OPINION BELOW

The opinion of the District Court of Appeal of Florida, Third District, affirming the trial court's granting of the Respondent's Motion to Suppress Statements is reported at State v. Romero, 471 So.2d 110 (Fla. 3d DCA 1985) reh. den. ___ So.2d ___ (Fla. 3d DCA July 8, 1985). The trial court's Order Granting Motion to Suppress Statements dated October 9, 1984 is found at A13 - A15.

JURISDICTION

The jurisdiction of this court is invoked pursuant to provisions of Title 28, United States Code §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment of the Constitution of the United States.

> Article [V]
>
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when an actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment of the Constitution of the United States.

> Article [VI]
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the assistance of counsel for his defense.

Fourteenth Amendment of the Constitution of the United States.

Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Florida, 1968 Revision.

Declaration of Rights

Section 9

> No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Section 16

> In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading, the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the State shall be fixed by law.

STATEMENT OF THE CASE

Respondent was charged with the first degree murders of Olmeda Mena and Jorge Rodriquez, pursuant to arrest warrants issued October 9, 1980. On January 19, 1984, Respondent was arrested.

On January 20, 1984, the Respondent appeared before the Honorable Meek Robinette for a first appearance and bond hearing.

The Public Defender was appointed to represent the Respondent/ Defendant. At said hearing the Public Defender undertook the representation of the Defendant and invoked the Defendant's right to counsel. The Assistant State Attorney who was present at the hearing acknowledged that the right to counsel had been invoked, and further indicated that city law enforcement would seek defense counsel prior to speaking with Mr. Romero. [A2 - A5].

Subsequent to said bond hearing, another Assistant State Attorney was assigned the case. He proceeded to instruct Detective Roberson to go to the jail, read Romero his rights and see if Romero would speak to the Detective. Said request was made without knowledge of the events occurring on January 20, 1984, however, the new Assistant State Attorney was aware the Public Defender had been appointed to represent Romero.

On January 30, 1984, Detective Roberson, accompanied by Detective Marva Preston, proceeded to the Dade County Jail for the purpose of interviewing the Defendant. Roberson did not know whether an attorney had been appointed for Romero, had not been informed that Romero did not wish to speak to them or advised not to contact Romero without his attorney being present. Romero was brought to the interview room in the Dade County Jail where Roberson identified himself and Detective Preston as police officers. Roberson told Romero he was the investigator responsible for his being in jail and charged with two homicides and that he would like to talk to Romero about the two cases. Before he did, Roberson explained that he must advise Romero of his rights. Romero did not indicate he was unwilling to speak without his attorney being present, nor did he inquire as to whether the officers had contacted his lawyer. The standard Miranda warning form was read and explained to Romero. Romero acknowledged that he understood those rights. He initialed each of the warnings, including the provision that he did not want an attorney, and then agreed to talk to the officers about his involvement in the two homicides for twenty

to thirty minutes. Romero was then advised that the officers would like to check him out of the jail and obtain a formal statement before a stenographer. He agreed and was then taken to the Miami Police Department where he was again advised of his rights, and he again signed and dated a form acknowledging he understood. For the third time, prior to a formal statement, the Defendant was read, had explained and signed a form indicating he understood his rights. If Romero indicated he did not understand something in English, the steno placed an asterisk at that point and it was explained to the Defendant in Spanish by an interpreter. Romero signed the formal statements. He never stated he wanted an attorney or that he did not wish to speak to the officers, or did he ask to call his attorney.

Romero made two formal statements after affirmatively waiving his Miranda rights.

Indictments for two first degree murder charges were returned February 8, 1984. On February 9, 1984, he appeared for arraignment and was appointed the Public Defender. A plea of not guilty was entered.

On September 4, 1984, Romero filed a motion to suppress his admission, confession and statements. He alleged said statements were obtained in violation of his right to counsel and privilege against self-incrimination as guaranteed by the Fifth and Sixth Amendments to the United States Constitution and Article 1, §§9 and 16 of the Florida Constitution. He also alleged that the statements were not fully and voluntarily given, contrary to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article 1, §9 of the Florida Constitution. A hearing was held on October 1, 1984 on said Motion at which time the trial court granted the Motion to Suppress. (Appendix A6 - A12).

On October 9, 1984, the trial court entered its written order suppressing oral and written statements. (Appendix A13 - A15).

The State of Florida immediately appealed and on May 28, 1985, the District Court affirmed the granting of the Motion to Suppress on the authority of Edwards v. Arizona, 451 U.S. 477 (1981) in State v. Romero, 471 So.2d 110 (Fla. 3d DCA 1985).

ARGUMENT

The Petitioner is apparently obsessed with the belief that Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1889, 68 L.Ed 2d 378 (1981), does not apply to the Sixth Amendment and therefore the "indiscriminate application" of Edwards to Sixth Amendment cases entitled them to certiorari. However, it is not necessary for this Court to address itself to the Sixth Amendment argument. The lower court's affirmance adopting Edwards v. Arizona, supra, therefore adopted the Respondent's position that the Fifth Amendment was applicable and, therefore, did not reach the Sixth Amendment claim.

The Respondent, pursuant to Florida Rules of Criminal Procedure 3.111 and 3.130(c)(1),[1] has a right to counsel and therefore counsel was appointed to represent him. Counsel for the Respondent, in the presence of the Respondent, in open court, invoked the Respondent's rights, pursuant to the Fifth and Sixth

---

[1] Rule 3.111 Providing Counsel to Indigents
(a) When Counsel Provided. A person entitled to appointment of counsel as provided herein shall have counsel appointed when he is formally charged with an offense, or as soon as feasible after custodial restraint or upon his first appearance before a committing magistrate, whichever occurs earliest.

Rule 3.130(c)(1)
(c) Counsel for Defendant.
(1) Where practicable, the magistrate should determine prior to the first appearance whether the defendant is financially able to afford counsel and whether he desires representation. When the magistrate determines that the defendant is entitled to court-appointed counsel and desires counsel, he shall immediately appoint counsel. This determination must be made and, where required, counsel appointed no later than the time of the first appearance, and prior to any other proceedings at the first appearance. If necessary, counsel may be appointed for the limited purpose of representing the defendant only at first appearance or at subsequent proceedings before the magistrate.

Amendments to the United States Constitution. An Assistant State Attorney, present in the courtroom, representing the State of Florida, acknowledged the invocation of these rights and stated that no law enforcement officers would speak with the Defendant without first contacting the Public Defender's Office. (Appendix A2 -A5).

It is obvious that the interrogation of the Respondent, initiated by the same State Attorney's Office, without first contacting Respondent's Attorney, or attempting to notify Respondent's attorney, violates this Court's holding in Edwards, supra, since Edwards is based upon Fifth and Fourteenth Amendment rights, this Court need not reach any Sixth Amendment argument.

Petitioner suggests that a subsequent waiver by the Respondent of his Miranda rights during the police inititated, and State suggested, interrogation renders the initial request to deal with the police only through his attorney void. As this Court has previously stated in Smith v. Illinois, ___ U.S. ___, 105 S.Ct. 490, 495 (1984):

> With respect to the waiver inquiry we accordingly have emphasized that a valid waiver "cannot be established by showing only that (the accused) responded to further police-initiated custodial interrogation." Edwards v. Arizona, 451 U.S. at 484, 101 S.Ct. at 1885. Using an accused's subsequent responses to cast doubt on the adequacy of the initial request itself is even more intolerable. "No authority, and no logic, permits the interrogation to proceed . . . on his own terms and as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all." (Citations omitted).

Since, the police did not have the right to initiate the interrogation of this Respondent without first contacting his attorney, any subsequent waiver by the Respondent of his

Miranda[2] rights is invalid.

Petitioner's reliance on Michigan v. Bladel, and Michigan v. Jackson, ___ U.S. ___, 37 Cr.L 4071, is misplaced and inappropriate. Although this Court has accepted both of those cases for review, the facts in each of them are distinguishable. In neither Michigan v. Jackson, and Michigan v. Bladel, had counsel already been appointed, or had counsel invoked the right of the defendant in open court. Additionally, in neither Michigan v. Jackson, nor Michigan v. Bladel, had the State acquiesced and agreed that the defendant's rights had been invoked and responded in open court with the fact that the police would not initiate conversation without contacting counsel. (Appendix A4).

Michigan v. Bladel and Michigan v. Jackson both deal with Sixth Amendment rights. The holding of the lower court in this cause, citing only Edwards v. Arizona, makes it clear that the lower court was enforcing the concept of the Fifth Amendment rights as set forth in Edwards v. Arizona. As set forth clearly in Edwards, supra, page 1885:

> The Fifth Amendment right identified in Miranda is the right to have counsel present at any custodial interrogation.

Thus, it was the Fifth Amendment right of the Respondent, which is implicated by the Edwards v. Arizona citation in the District Court of Appeal, Third District of Florida.

Petitioner's attempt to draw a conflict and tie the instant case into the conflict that this Court has accepted in Michigan v. Bladel is inappropriate, as well as misapprehended.

CONCLUSION

The opinion of the Third District Court, and its reliance upon Edwards v. Arizona, supra, is appropriate in light of the facts in this case. The Respondent's right,

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[2] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

pursuant to the Fifth Amendment, to deal with the authorities only through his attorney, were properly invoked and acknowledged on January 20, 1984. The subsequent admissions by the Respondent made during a police initiated interrogation without benefit of counsel, are inadmissible, pursuant to Edwards. Any waiver by the Respondent of his Miranda rights during this interrogation is invalid.

Since the instant case involves a Fifth Amendment and not a Sixth Amendment claim, it is directly controlled by Edwards. The Petition for Review should be denied, as inappropriate and not being the same as, or impacted by, this Court's determination in Michigan v. Bladel, supra. Review, therefore, should be denied.

Respectfully submitted,

MICHAEL L. VON ZAMFT
Attorney for Respondent/Defendant

By: Michael Von Zamft 11-1-1

MICHAEL L. VON ZAMFT
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Tele: (305) 374-1212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the of the foregoing Response of Respondent on Jurisdiction was mailed this 16th day of December, 1985, to: OFFICE OF THE ATTORNEY GENERAL, Department or Legal Affairs, 401 N.W. 2nd Avenue, Suite 820, Miami, Florida 33128.

MICHAEL L. VON ZAMFT
Attorney for Respondent/Defendant

By: Michael Von Zamft

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APPENDIX TO RESPONSE OF RESPONDENT

ON JURISDICTION

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0-1341

X Felony ☐ Misdemeanor ☐ Traffic ☐ Juvenile ☐ Warrant 5216

FIFTH Pct: 30

DEFENDANT'S NAME Last: ROMERO First: PEDRO Middle: — DOB mo day yr: 7/1/56 Sex: M Race: W Ethnic: — Height: 5-7 Weight: 140 Hair: BL

LOCAL ADDRESS Street: NONE City: — State: — Zip: — Phone: — Alias: GIOVANNI MAS

PERMANENT ADDRESS Street: NONE City: — State: — Zip: — Phone: — Address Source ☐ Verbal ☐ Voter ☐ Driver's License ☐ Other

BUSINESS ADDRESS Street: — City: — State: — Zip: — Phone: — Occupation: LABORER Place of Birth: COLB

DRIVER'S LICENSE NO. — State: — Social Security No: UNK Scars, Tattoos, Unique Physical Features: NONE

WEAPON ☐ Yes No X Arrest Date mo day yr: 01/19/84 Arrest Time: 12:05 ☐ A.M. X P.M. Arrest Location (include name of business): 211 W. TEMPLE ST. LA. CAL

CO DEFENDANTS 1. Last First Middle DOB mo day yr ☐ In Custody ☐ At Large ☐ Felony ☐ Misdemeanor ☐ Juvenile

2. Last First Middle DOB mo day yr ☐ In Custody ☐ At Large ☐ Felony ☐ Misdemeanor ☐ Juvenile

CHARGES	STATUTE	AC X CAPIAS BW FW PW CIT	VIOLATION OF THE CODE
1 1ST Degree MURDER		C-30/19310	
2 Poss of FIREARM while ENGAGED IN CRIMINAL OFFENSE		C-30-19310	
3 1ST Degree MURDER			
4 ATT-1ST Degree MURDER		C-30-19309	

The undersigned certifies and swears that he has just and reasonable grounds to believe, and does believe that the above named Defendant

On the ___ day of ___ 19___ At ___ ☐ A.M. ☐ P.M. (Time) (Location, include name of business)

committed the following violation of law. Narrative (Be specific)

SUBJ. RETURNED FROM L.A. CALIF.
ON WAIVERS - REF: DADE CO.
WARRANT 30-19310

NO-BOND

CHARGE
#5 Poss-OF FIRE ARM While ENGAGED IN CRIMINAL OFFENSE

DC# 84-304

DO NOT SUBPOENA OFFICER

PAGE 1 OF

Held for Other Agency
Agency METRO Verified By BRENN

I Swear that the above Statement is correct and true to the best of my knowledge and belief.

J. BYRNE / R. MENICOU
Officer's Name (Print)

J. E. Byrne
Officer's Signature

METRO 1734 (19)
Department Name Court ID Number

33.02.142 REV. 10/81

☐ HOLD FOR BOND HEARING DO NOT BOND OUT (Officer Must Appear at Bond Hearing)

Sworn to and subscribed before me the undersigned authority, this 19th day of Jan 19 84

Deputy of the Court or Notary Public

COURT COPY

I understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued. Furthermore I agree that notice concerning the time, date, and place of all court hearings should be sent to the above address. I agree that it is my responsibility to notify Clerk of the Court (Juveniles notify Family Division Juvenile Section) anytime that my address changes.

☐ You need not appear in court, but must comply with the instructions on the reverse side hereof.

Signature of Defendant; Juvenile and Parent or Guar

Defendant's Exhibit B

FILED
OCT 1 1984
RICHARD P. BRINKER
CLERK

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 84-5216

STATE OF FLORIDA, :

Plaintiff, :

vs. : BOND HEARING

PEDRO ROMERO, :

Defendant. :

----------x

The above entitled cause came on for hearing before the Honorable Meek Robinette, at the Metropolitan Justice Building, Courtroom 2-4, 1351 Northwest 12th Street, Miami, Florida, on January 20, 1984.

Wax, Swan & Associates
COURT REPORTING SERVICES
1481 N.W. NORTH RIVER DRIVE
MIAMI, FLORIDA 33125
(305) 324-6414

APPEARANCES:

DAVID MARKUS,
Assistant State Attorney
State Attorney's Office
1351 N.W. 12th Street
MIami, Florida 33125
on behalf of the State.

GARY NUNES,
Assistant Public Defender
Public Defender's Office
1351 N.W. 12th Street
MIami, Florida 33125
on behalf of the Defendant.

ALSO PRESENT:

Pedro Romero

THE CLERK: Pedro Romero.

THE COURT: First degree murder. No bond.

MR. NUNES: May the record reflect we are invoking Mr. Romero's right to counsel.

MR. MARKUS: On counsel, City law enforcement will seek defense counsel prior to speaking with Mr. Romero.

THE COURT: Are you saying, Gary, that you will not accept this man?

MR. NUNES: We are accepting. We are invoking his right to counsel at this time meaning should the State or any of its agents wish to speak to Mr. Romero, they would be in contact with his attorney prior to attempting to interview him or question him in any way, shape or form.

THE COURT: Let the record reflect the name of the prosecutor.

MR. MARKUS: David Markus.

THE COURT: You heard the statement by the Public Defender?

MR. MARKUS: I did. I also wrote it on the A-Form.

THE COURT: You wrote it or the A-Form.

MR. MARKUS: We are aware of the statement in Court.

THE COURT: No bond.

(Thereupon the hearing was concluded).

CERTIFICATE

STATE OF FLORIDA:
SS.
COUNTY OF DADE:

I, GERI SMITH, Court Reporter, hereby certify that the foregoing transcript, numbered from page 1 to 3 is a true and correct transcription of my stenographic notes of the proceedings had in the State of Florida versus Pedro Romero, Case No. 84-5216, before the Honorable Meek Robinette, at the Metropolitan Justice Building, Miami, Florida on the 20th day of January, 1984.

DATED at Miami, Dade County, Florida, this 20th day of April, 1984.

GERI SMITH
Court Reporter

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 80-19309

THE STATE OF FLORIDA,

Plaintiff,

vs.

PEDRO ROMERO, a/k/a GIOVANNI MASCARA,

Defendant.

MOTION TO SUPPRESS ADMISSIONS, CONFESSIONS AND STATEMENTS

The Defendant, PEDRO ROMEREO, through his undersigned counsel, pursuant to Rule 3.190(i) RCrP, moves this Court to suppress as evidence in the above-styled cause, any written and oral statements made by this Defendant to the police or other State agents. As grounds therefore it is alleged that:

1. The statements were obtained from this Defendant in violation of his right to counsel, and his privilege against self-incrimination as guaranteed by the Fifth, Sixth and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and by Article I, §16 of the Florida Constitution.

2. The statements obtained from the Defendant were not freely and voluntarily given in violation of his rights as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by Article I, Section 9 of the Florida Constitution.

3. The statements were obtained from the Defendant in violation of his rights as secured by Rule 3.130, FRCrP.

PRADITZ & VON ZAMPT ATTORNEYS AT LAW SUITE 223 7800 W 20TH AVE HIALEAH FL 33016

WHEREFORE, the Defendant requests this Court grant this Motion.

Respectfully submitted,

KRAVITZ & VON ZAMFT
7600 West 20th Avenue
Suite 223
Hialeah, Florida 33016
Telephone: 558-5300

By: Michael L. Von Zamft, PA
MICHAEL L. VON ZAMFT
Attorney for Defendant
PEDRO ROMERO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/delivered this 31st day of August, 1984, to: Flora Seff, Assistant State Attorney, 1351 N.W. 12 Street, Miami, Florida 33125.

By: Michael L. Von Zamft, PA
MICHAEL L. VON ZAMFT

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 80-19309

THE STATE OF FLORIDA,

Plaintiff,

vs.

PEDRO ROMERO, a/k/a GIOVANNI MASCARA,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPRESS STATEMENTS

ISSUE

THE DEFENDANT, PEDRO ROMERO, DID NOT VALIDLY WAIVE HIS RIGHT TO SILENCE AND TO HAVE COUNSEL PRESENT DURING CUSTODIAL INTERROGATION AFTER HIS RIGHT TO COUNSEL HAD BEEN INVOKED SO THAT HIS STATMENTS ARE INADMISSIBLE AS EVIDENCE TO BE USED AGAINST THE DEFENDANT?

FACTS

On November 3, 1982, the Defendant was arrested by the Los Angeles Sheriff's Office. On January 27, 1983, the Metro-Dade Warrants Bureau notified the Sheriff's Office that they were lodging warrants as a detainer against the Defendant. The Defendant signed a waiver of extradition and was brought to Dade County on January 19, 1984. A first appearance hearing was held before Judge Meek Robinette on January 20, 1984. The Defendant was represented by Gary Nunes, an Assistant Public Defender, and the state was represented by David Marks. Bond was denied.

At this hearing Public Defender Nunes invoked the Defendant's right to counsel and right to remain silent. The State Attorney acknowledged by saying that "[C]ity law enforcement will seek defense counsel prior to speaking with Mr. ROMERO." The State Attorney reinforced this point by writing on the arrest form "Rights were invoked orally by Gary Nunes, on the record."

ARNOVITZ & VON ZAMFT ATTORNEYS AT LAW SUITE 223 7800 W 20TH AVE HIALEAH FL 33016

On January 30, 1984, the Defendant was "visited" at the Dade County Jail by Detectives B. Roberson and M. Preston, both from the Miami Police Department's, Homicide Division. The Defendant's attorney was never consulted, nor informed, that this meeting was to occur. The detectives were sent to see the Defendant by Assistant State Attorney, Greg Victor.

The Defendant's rights per Miranda were given to him in English (not his native tongue). He then gave a statement about the shootings which occurred in 1980. The detectives then transported the Defendant to the City of Miami Police Department so that the Defendant could give a statement on the record.

ARGUMENT

The Defendant's Sixth Amendment right to counsel had attached as of January 20th at the bond hearing. Such right was asserted in open court, heard by the judge, and noted by the state. If Detective Roberson was not aware of this, he should have been made aware by the State Attorney on the case. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, is clear on this point. When the accused or his attorney invokes the right to counsel, there must be no interrogation until an attorney is present. The court stated that at any future interrogation, "the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning." Id, at 474. See also Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981); Wakeman v. State, 237 So.2d 61 (Fla. 4th DCA 1970).

The Defendant was therefore plainly entitled to the assistance of counsel. The only remaining question is whether the Defendant waived that right.

The United States Supreme Court has held in North Carolina v. Butler, 99 S.Ct. 1755 (1979), that an accused may indeed validly waive his rights and respond to interrogation. The court determined that the totality of the circumstances must be considered when determining a valid waiver. The Supreme Court also strongly stated in Edwards v. Arizona, 101 S.Ct. 1880

KNAVITZ & SCHERER ATTORNEYS AT LAW SUITE 203 7600 W 20TH AVE HIALEAH FL 33016

(1981), that when an accused has invoked, or his attorney has invoked for him, his right to have counsel present during custodial questioning, "a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." Id., 101 S.Ct., at 1884.

The Supreme Court went on to say that, when an accused expresses his desire to deal with police only through counsel, all interrogation must cease. The Defendant is not to be subjected to interrogation by the authorities until counsel is present, "unless the accused himself initiates further communication, exchanges or conversations with the police." Id., at 1884-1885. For "it is inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel."

Had the Defendant, himself, initiated the admissions on January 30, 1984, the detectives would not have been prohibited from listening to any volunteered statements and later using them against the Defendant at trial. There would have been no Fifth, Sixth or Fourteenth Amendment infringements and no need to determine whether there had been a valid waiver. Rhode Island v. Innis, 100 S.Ct. 1682 (1980).

The state also has a heavy burden of proving any subsequent statement from the Defendant is a product of a knowing and intelligent waiver of his right to remain silent and consult an attorney. Carson v. State, 373 So.2d 372 (Fla. 2d DCA 1979). The state must demonstrate an "intentional relinquishment or abandonment of a known right or privilege." Brewer v. Williams, 430 U.S. at 404, quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Courts must "indulge in every reasonable presumption against waiver." Id., at 404. This "strict standard applied equally to an alleged waiver of the right to counsel whether at trial or at a critical stage of pretrial proceedings." Id., at 405.

In Brewer, supra, the United States Supreme Court

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quashed incriminating admissions where it was shown they were given during a conversation initiated by police officers who were transporting the Defendant in an automobile after the Defendant's attorney had made it clear his client was refusing to give a statement. Similarly, in the present case, the police initiated the discussion about the case with the Defendant in violation of the Defendant's invocation of his rights.

Rhode Island v. Innis, supra, gives the standard to be applied in determining when police questioning becomes custodial interrogation. The Court stated that "any practice that the police should know is likely to evoke an incriminating response from a suspect thus amounts to interrogation." 446 U.S. at 301, 100 S.Ct. at 1690.

In the present case, the detectives should have known that the Defendant had counsel. They should not have interrogated the Defendant. The police were mislead by the State Attorney as to whether or not the Defendant's right to counsel had been invoked and the State Attorney should have told them that no questioning could be done without a defense attorney present.

Whether or not this was a deliberate attempt to deprive the Defendant of the presence of counsel until after a confession had been obtained, the result was that the Defendant was in fact deprived of effective representation at a crucial stage of the pretrial proceedings. Any fruits received by this tainted interrogation, initiated by the City of Miami Detectives at the directive of the State Attorney, should therefore not be used against the Defendant.

The totality of the circumstances, the law, and the facts in this case, show there was not a valid waiver of the Defendant's right to counsel, and right to remain silent, and that police procedures violated the Defendant's Fifth, Sixth and Fourteenth Amendment rights as stated in Edwards, supra, Brewer, supra, and Miranda, supra. The statements made by Defendant as a result of the interrogation are fruits of the poisonous tree and

KRAVITZ & VON ZAMFT ATTORNEYS AT LAW SUITE 223 7600 W 20th AVE HIALEAH FL 33016

may not be used against the Defendant.

Respectfully submitted,

KRAVITZ & VON ZAMFT
7600 West 20th Avenue
Suite 223
Hialeah, Florida 33016
Telephone: 558-5300

By: _____
MICHAEL L. VON ZAMFT
Attorney for Defendant
PEDRO ROMERO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed/delivered this 31st day of August, 1984, to: Flora Seff, Assistant State Attorney, 1351 N.W. 12 Street, Miami, Florida 33125.

By: _____
MICHAEL L. VON ZAMFT

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 80-19309

THE STATE OF FLORIDA,

Plaintiff,

vs.

PEDRO ROMERO, a/k/a GIOVANNI MASCARA,

Defendant.

ORDER GRANTING MOTION TO SUPPRESS STATEMENTS

THIS CAUSE came before this Court on the motion of the Defendant to suppress statements made to the City of Miami Police Department, and this Court having taken testimony, heard argument of counsel, been supplied with and read memorandums of law and the cases cited, and in all respects being fully apprised of all circumstances, therefore finds that;

1. The Defendant, PEDRO ROMERO, was taken into custody pursuant to a warrant issued in Dade County, Florida.

2. The Defendant, PEDRO ROMERO, appeared before a county court judge at first appearance hearing on January 20, 1984.

3. At the first appearance hearing on January 20, 1984, PEDRO ROMERO was appointed the Public Defender to represent him.

4. At the January 20, 1984 hearing, an Assistant Public Defender representing Mr. ROMERO invoked Mr. ROMERO's right to counsel pursuant to the Sixth Amendment and as well invoked Mr. ROMERO's Fifth Amendment rights.

5. These rights on behalf of Mr. ROMERO were invoked orally in open court in the presence of an Assistant State Attorney.

6. The Assistant State Attorney representing the State Attorney for the 11th Judicial Circuit, acknowledged and accepted these rights and stated that:

On [illegible]sel, city law enforcement will seek defense counsel prior to speaking with Mr. Romero.

7. On January 30, 1984, Mr. ROMERO was interviewed by officers of the City of Miami Police Department at the direction of a different Asistant State Attorney.

8. At the interview on January 30, 1984, Mr. ROMERO signed a waiver of rights form.

9. After waiving his rights per the rights waiver form, Mr. ROMERO gave the statements which are the subject of this order to the City of Miami Police.

Based upon the above facts, it is the finding of this Court that:

A. Mr. ROMERO was appointed counsel at the hearing on January 20, 1984. Whether or not this appointment was improvident, it was in fact, appointment of counsel pursuant to Florida Rule of Criminal Procedure 3.111 and the Constitution of the State of Florida, Article I, §16.

B. Whether the appointment of counsel was improvident or not, the State Attorney's Office, through the Assistant State Attorney present, acknowledged the appointment of counsel and acknowledged the invocation of Mr. ROMERO's rights by the Assistant Public Defender.

C. The acknowledgement by the Assistant State Attorney of Mr. ROMERO's appointment of counsel and the invocation of rights by that counsel is a fact which makes this case different than other cases which have held that Mr. ROMERO's right to counsel would not have attached until a formal adversary proceedings began.

D. Mr. ROMERO's Sixth Amendment Right to Counsel attached at the January 20, 1984 hearing and that Mr. ROMERO's rights to such counsel, pursuant to the Sixth Amendment were invoked on his behalf at that hearing.

E. The subsequent approach of Mr. ROMERO by the City of Miami Police, subsequent waiver of his rights and taking of a statement was violative of his right to be represented by coun-

sel, pursuant to the Sixth Amendment to the Constitution of the United States, as well as Florida Rule of Criminal Procedure 3.111 and Article I, §16 of the Florida Constitution.

It is therefore, hereby

ORDERED AND ADJUDGED that the oral and written statements given by PEDRO ROMERO to the City of Miami Police Department as a result of the interrogation on January 30, 1984 are hereby suppressed and excluded as evidence in this cause.

DONE AND ORDERED in Miami, Dade County, Florida this 9th day of October, 1984.

EDWARD COWART
CIRCUIT COURT JUDGE

Copies Furnished To:

Michael L. Von Zamft, Esq.
Flora Seff, Asst. State Attorney

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 1985

THE STATE OF FLORIDA,	**	
Appellant,	**	
vs.	**	CASE NO. 84-2284
PEDRO ROMERO, a/k/a GIOVANNI MASCARA, a/k/a JIMMY,	**	
	**	
Appellee.	**	

Opinion filed May 28, 1985.

An Appeal from the Circuit Court for Dade County, Edward Cowart, Judge.

Jim Smith, Attorney General, and Henry R. Barksdale, Assistant Attorney General, for appellant.

Michael Von Zamft and Claire Tacher, for appellee.

Before SCHWARTZ, C.J., and HENDRY and DANIEL S. PEARSON, JJ.

PER CURIAM.

Affirmed. Edwards v. Arizona, 451 U.S. 477, 484, 101 S.Ct. 1880, 1884, 68 L.Ed. 2d 378, 386 (1981).

RECEIVED MAY 29 1985

LAN P. SCHWARTZ
Chief Judge
THOMAS H. BARKDULL, JR.
CHAN HENDRY
PHILIP A. HUBBART
JOSEPH NESSITT
ATAL E. BASKIN
DANIEL S. PEARSON
HAROLD D. FERGUSON, JR.
JAMES R. JORGENSON
Judges

DISTRICT COURT OF APPEAL
THIRD DISTRICT
2001 S. W. 117 AVENUE
P. O. BOX 650307
MIAMI, FLORIDA 33165

TELEPHONE 554-2900

LOUIS J. SPALLONE
Clerk
RUFUS E. SMITH, JR.
Marshal
DELBERT P. BUTCHER, JR.
Chief Deputy Clerk

JULY 24, 1985

Re: STATE vs PEDRO ROMERO
DCA #84-2284 CIRCUIT #80-19309

This is to advise you that the mandate in the above styled cause has been issued this date and mailed to Richard P. Brinker, Clerk of the Circuit Court of Dade County, Florida.

Very truly yours,

Louis J. Spallone
Clerk District Court of
Appeal, Third District

LJS/ hb

cc: Jim Smith and Henry R. Barksdale; Michael Von Zamft

RECEIVED JUL 25 1985